

TO: ALL PERSONNEL
FROM: EMIL E. TAHVONEN

No. 12 - February 19, 1982
State Assessors Board
Examination & Certification
Fees

STATE OF MICHIGAN

FRANK J. KELLEY, ATTORNEY GENERAL

CONSTITUTIONAL LAW:

Const 1963, art 4, §§ 24 and 25--
amendment by implication by
appropriation acts

Sufficiency of title to appro-
priations acts

STATE ASSESSOR'S BOARD:

Rules fixing fees for examina-
tion and certification of
assessors

1980 PA 376, § 64 and 1981 PA 30, § 43, providing for the
amount of fees to be charged for examination, certification
and renewal of certification of assessors and for a revolving
fund in which such fees are to be placed, do not violate Const
1963, art 4, § 25.

The titles to 1980 PA 376 and to 1981 PA 30, respectively, do
not violate Const 1963, art 4, § 24.

Because the Administrative Procedures Act does not authorize
rules which fix fees for examination, certification and
renewal of certification of assessors, Administrative Code
1979, R 211.427, R 211.437 and R 211.444 are invalid and
without force or effect.

Opinion No. 6040

FEB 09 1982

Honorable John A. Welborn
State Senator
The Capitol
Lansing, Michigan

You have requested my opinion on two questions. Your
first question is:

Does section 64 of 1980 PA 376, the
appropriation act for general government,
by implication, amend sections 10c and 10d
of 1893 PA 206, as amended, (General
Property Tax Act), thus being in violation
of Const 1963, art 4, § 25?

Const 1963, art 4, § 25 provides:

"No law shall be revised, altered or
amended by reference to its title only.
The section or sections of the act altered
or amended shall be reenacted and published
at length."

In 1980 PA 376, § 64, the Legislature has provided:

"A revolving fund to be known as the assessor certification and training fund is created under the control of the department of treasury. The fund shall be used to organize and operate a property assessor certification and training program. Each participant certified and trained shall pay, and the department of treasury shall collect, an examination fee of \$15.00, an initial certification fee of \$25.00, an annual renewal fee of \$35.00 for levels 1 and 2 and \$65.00 for levels 3 and 4 to offset the cost of administering the certification and training program. The fees collected shall be credited to the assessor certification and training fund."

The current applicable provision is found in the appropriation act for fiscal year 1981-1982, 1981 PA 30, § 43, which contains language identical to 1980 PA 376, § 64.

The General Property Tax Act, 1893 PA 206, § 10c, as last amended by 1978 PA 124; MCLA 211.10c; MSA 7.10(3), provides for a state assessor's board authorized to conduct training courses in assessment and to give examinations to determine if assessing officers possess the necessary qualifications for performing the functions of the office.

In 1893 PA 206, § 10d, as last amended by 1980 PA 456; MCLA 211.10d; MSA 7.10(4), the Legislature has provided:

"(1) The annual assessment of property shall be made by an assessor who has been certified as qualified by the board as having successfully completed training in a school of assessment practices or by the passage of a test approved by the board and conducted by the board or an agency approved by the board that will enable the person to properly discharge the functions of the office. The school shall be established by an approved educational institution in conjunction with the board and be supervised by the board and its agents and employees. The board may determine that a director of an equalization department or an assessor, who has not received the training, possesses the necessary qualifications for performing the functions of the office by the passage of an approved examination."

"(2) The board may also grant a conditional 6-month certification to a newly elected assessing officer or an assessing officer appointed to fill an unexpired term if all of the following criteria are met:

"(a) The newly elected or appointed assessing officer makes an application for certification with payment of the required filing fee.

"(b) The governing body of the local assessing unit requests the board to conditionally certify the newly elected or appointed assessing officer.

"(c) The newly elected or appointed assessing officer or the governing body submits a statement outlining the course of training he or she plans to pursue.

"(d) The period of time for which the conditional certification is requested does not exceed 6 months after the date that he or she assumes office.

"(3) Conditional certification shall not be granted for any assessment unit more than once in 4 years.

"(4) Conditional certification under subsection (2) shall only be granted to a newly elected or appointed assessing officer in an assessment unit which does not exceed a total state equalized valuation of \$125,000,000.00.

"(5) Upon presentation of evidence of the successful completion of the qualifications, the assessor shall be certified as qualified by the board.

"(6) A local assessing district which does not have an assessor qualified by certification of the board may employ an assessor so qualified. If a local assessing district does not have an assessor qualified by certification of the board, and has not employed a certified assessor, the assessment shall be made by the county tax or equalization department or the state tax commission and the cost of preparing the rolls shall be charged to the local assessing district.

"(7) Every lawful assessment roll shall have a certificate attached signed by the certified assessor who prepared or supervised the preparation of the roll. The certificate shall be in the form prescribed by the state tax commission. If after completing the assessment roll the certified assessor for the local assessing district dies or otherwise becomes incapable of certifying the assessment roll, the

county equalization director or the state tax commission shall certify the completed assessment roll at no cost to the local assessing district.

"(8) The local assessing district shall assume the cost of training, if a certification is awarded, to the extent of course fees and recognized travel expenditures.

"(9) An assessor who certifies an assessment roll in which he or she did not have direct supervision is guilty of a misdemeanor.

"(10) The board shall promulgate rules for the issuance or revocation of certification."

Neither 1980 PA 376, § 64 nor 1981 PA 30, § 43 conflict with any provision contained in 1893 PA 206, § 10d, supra.

It should be noted that prior to enactment of 1980 PA 376, the State Assessor's Board, citing the Administrative Procedures Act, 1969 PA 306, § 33; MCLA 24.233; MSA 3.560(133), as authority for promulgation, adopted certain administrative rules relating to the establishment of training programs, the rating of assessing units and the certification of assessors. The rules promulgated include Administrative Code 1979, R 211.427, which requires a \$15.00 examination fee; Administrative Code 1979, R 211.437, which requires a \$25.00 fee for application for certification; and Administrative Code 1979, R 211.444, which requires a \$15.00 certification renewal fee. Section 33 of the Administrative Procedures Act, supra, does not authorize the State Assessor's Board to promulgate rules fixing examination and certification fees for assessors. Said rules are, therefore, without authority or validity.

1980 PA 376, § 64 and 1981 PA 30, § 43 also do not conflict with the provisions of 1941 PA 258; MCLA 21.121 et seq; MSA 3.305(1) et seq, which provides for the disposition of surplus or deficit in certain state revolving funds, since

the revolving fund established by 1980 PA 376, § 64 and 1981 PA 30, § 43 expire at the end of the 1980-1981 and 1981-1982 fiscal years, respectively. Columbini v Department of Social Services, 93 Mich App 157; 286 NW2d 77 (1979).

It is my opinion, therefore, that 1980 PA 376, § 64 and 1981 PA 30, § 43 do not violate Const 1963, art 4, § 25.

Your second question is:

Is the title of 1980 PA 376 in violation of Const 1963, art 4, § 24 in that it fails to provide fair notice that the content of the Act contains the creation of a revolving fund?

In Const 1963, art 4, § 24, the people have provided:

"No law shall embrace more than one object, which shall be expressed in its title. No bill shall be altered or amended on its passage through either house so as to change its original purpose as determined by its total content and not alone by its title."

1980 PA 376 is a general government appropriations statute. Its title states:

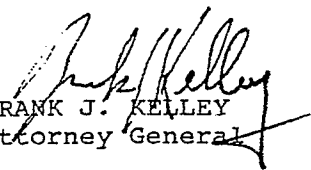
"AN ACT to make appropriations for the legislature, judiciary, the executive, and the departments of attorney general, civil service, civil rights, management and budget, state, and treasury for the fiscal year ending September 30, 1981; to provide for the imposition of fees; and to provide for the disposition of fees and other income received by the various agencies."

The title to 1981 PA 30, the current applicable appropriation for the fiscal year 1981-1982, contains the identically worded title, except for designation of the fiscal year ending September 30, 1982.

The establishment by 1980 PA 376, § 64 and 1981 PA 30, § 43 of a schedule for the imposition of fees and provi-

sions for the disposition of such fees through a revolving fund created for the fiscal year only clearly are directly related to the object of 1980 PA 376 and 1981 PA 30, respectively, as expressed by each title.

In answer to your second question, it is my opinion that 1980 PA 376, § 64 and 1981 PA 30, § 43 do not violate Const 1963, art 4, § 24.


FRANK J. KELLEY
Attorney General